

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.46 OF 2003**

1.Smt.Yamunabai Sadashiv Walunj
2.Appa Sadashiv Walunj
3.Rangnath Sadashiv Walunj
4.Sudam Sadashiv Walunj
5.Pandurang Sadashiv Walunj
6.Smt.Devubhai Prabhakar Walunj
7.Rajendra Prabhakar Walunj
8.Kalpana Bandu Walunj

...Appellants

vs.

1.Bhagwant Balku Walunj
2.Nivrutti Bhagwant Walunj
3.Subash Bhagwant Walunj
4.Sou.Alka Gyaneshwar Gholap
5.Sou.Nanda Pandurang Narwade
6.Baban Rambhau Walunj
7.Maruti Baban Walunj
8.Dattatray Rambhau Walunj
9.Natha Dattatray Walunj
10.Dattatray Shankar Morde
11.Tarachand Deoram Karale
12.Bhimsen Jaywant Nigut
13.Dattatray Bhagwan Nigut
14.Kashinath Bajaba Nigut
15.Dyaneshwar Bhikaji Gholap
16.Nitin Bhikaji Gholap
17.Alidhar Maruti Walunj
18.Babaji Maruti Walunj

...Respondents

Mr.P.B.Shah for the Appellants

Mr.A.L.Patki for Respondent Nos.1 to 9 and 17 to 18.

Mr.U.B.Nighot for Respondent Nos.10 to 16.

**CORAM: A.S.OKA, J.
DATE : APRIL 27, 2007.**

JUDGMENT:

1. The Appellants are the original Plaintiffs. The appellants have taken an exception to the Judgment and Order dated 9th august 2002 passed by the learned II Joint Civil Judge, Senior Division, Pune on an Application at Exh.5 for temporary injunction filed by the Appellants. The Application at Exh.5 was for temporary injunction restraining the

Respondent Nos.10 to 16 from interfering with alleged possession of the Appellants over the suit properties.

2. The suit filed by the Appellants is for partition and separate possession. The Appellant Nos.1 to 5 are claiming two anna share in the suit properties more particularly described in the plaint. The Appellant Nos.6 to 9 are claiming two anna share in the suit properties. The challenge in the suit is also to the sale deeds executed by the Respondents Nos.1,6 and 8 in favour of the Respondent Nos.10 to 16. There also a challenge to the deed of partition executed by the Respondent Nos.1 and 6 and others. The contention of the Appellants in the suit is that one Rambhau was the original owner of the suit properties. Rambhau had four sons viz. Baburao (since deceased), Balku (since deceased), Baban (Respondent No.6) and Dattatraya (Respondent No.8). Respondent no.7 is the son of Baban and Respondent No.9 is the son of Dattatraya. Respondent No.1 is the son of Balku and Respondent Nos.2 to 5 are the sons and daughters of Respondent No.1. The Appellants and the Plaintiffs are claiming through deceased Sadashiv and deceased Prabhakar who are the sons of deceased Baburao. The suit properties are more particularly described in paragraph No.1 of the plaint. The suit properties are the landed properties. According to the Appellants the suit properties were never partitioned after demise of Rambhau and the Appellants are in joint possession of the suit properties along with Respondent Nos.1 to 9. A part of the joint family property were acquired for

public purpose and the compensation amount was received by the Appellants along with the concerned Respondents. Some of the Respondents transferred the suit properties in favour of the Respondent Nos.10 to 16 and that is the reason for filing the suit.

3. Respondent nos.1 and 6 to 8 filed a reply to the Application for temporary injunction. In the said reply, it was contended that the Appellants and Respondent Nos.1 to 10 were in possession of the different parts of the suit properties for last several years. It is contended that the purchasers of the properties i.e. Respondent Nos.10 to 16 are in possession of the respective properties purchased by them.

4. The learned Trial Judge held that prima facie case was not established by the Appellants. The learned Judge held that under the guise of application for temporary injunction, the Appellants were trying to dispossess the respondent Nos.10 to 16.

5. The learned Counsel for the Appellants invited my attention to the various documents and in particular the sale deeds executed in favour of the respondent Nos.10 to 16. He pointed out that the sale deeds itself disclose that undivided shares were sold to Respondent Nos.10 to 16 who were strangers to the family and therefore, they could not be in possession. He invited my attention to the recitals in the sale deeds. He submitted that Respondent nos.10 to 16 being the strangers in

the joint family cannot be dispossess the Appellants who are having undivided share. The learned Counsel for the respondents submitted that no interference is called for with the discretionary order passed by the trial court. They have also invited my attention to the various documents on record.

6. I have considered the submissions. The application for temporary injunction was rejected by the impugned order passed on 9th August 2002. The Appeal was admitted on 1st March 2004. By way of interim relief, this court directed the Respondents not to create any third party interests. Prior to that, on 17th January 2003, this Court had granted ad-interim relief in terms of prayer clause (b) of the Civil Application No.59 of 2003 which had the effect of staying the impugned order. As stated earlier by the impugned order, the application for temporary injunction filed by the Appellants has been rejected. Thus, the only effective interim order which is operating is by which the Respondents have been restrained from creating any third party interests. Thus, from 9th August 2002, there is no injunction operating in favour of the Appellants which protects the possession of the Appellants.

7. It is true that some of the sale deeds refer to transfer of undivided shares. However, some of the sale deeds refer to delivery of possession of the specific shares of the properties. The order of temporary injunction is always discretionary. For a period of more than four and half years

there is no temporary injunction operating in favour of the Appellants which protects their alleged possession over the suit properties. The only order which is operating in favour of the Appellants is of injunction restraining the respondents from creating third party interests in respect of the suit properties. The substantive suit for partition and separate possession is pending. After lapse of such a long period, at this stage, it is very difficult to modify the interim order by granting injunction which will have the effect of protecting the alleged possession of the Appellants over the suit properties. The suit for partition will have to be disposed of expeditiously. The suit is of the year 2002. Interests of justice will be served if ad-interim relief which was operating during the pendency of this Appeal is continued till the final disposal of the suit. No interference is called for with the impugned order.

8. Accordingly, I pass the following order :

- i) Appeal is disposed of in above terms.
- ii) Ad-interim order passed by this Court on 1st March 2004 will continue to operate till the final disposal of the suit.
- iii) All contentions of the parties on merits of the suit are expressly kept open.
- iv) Hearing of the suit is expedited.

JUDGE